

AL-15-000-1518

To the Honorable Senator Cornyn
From William Rucker

October 23, 2014

Dear Senator Cornyn;

This Report is provided from *exempt b* owner, and general manager of Texas Environmental Technologies ("TET") concerning collusion, corruption, and restraint of trade within the United States Environmental Protection Agency Office of Transportation and Air Quality, Ann Arbor Michigan (EPA). We also believe that the EPA by its actions has deprived *exempt b* and Texas Environmental Technology of our 5th amendment right of "due process of law" is part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property. No part of this letter is meant to be inflammatory, however, is meant to convey, our grave concerns regarding the EPA and Ms Chen its representative.

We are clearly a victim of retaliatory practices and because of the effort to damage our company the EPA representative has targeted our customers and held them to standards that are above the requirements of other laboratories. EPA has targeted TET and damaged several other U. S. small businesses and currently is carrying out a systematic effort to damage those companies.

Sir time is of the essence, every day this behavior is allowed to continue the amount of business damage increases and the loss of business is not recoverable.

We are asking for a two part settlement: 1. An EPA staff that is required to follow the CFR regulations and treats all manufactures fairly and supports the goals of the clean air act which include developing a partnership between business and the EPA. 2. A panel of industry representatives that are empowered with the ability to add civilian oversight to a government group that bullies small business and needs to be held accountable by those it governs.

Sir this group is out of control and is the exact reason US citizens are angry with government; they are damaging U.S. companies, hurting job growth, and ultimately targeting the very companies that are attempting to clean up an already difficult industry that is very heavily government regulated.

Thank you for your attention to this matter I eagerly await your help.

Regards,

exempt b



U.S. Senator John Cornyn

Attention: Casework Dept.
517 Senate Hart Office Building
Washington, DC 20510-4305
(972) 239-1310 (Telephone)
(972) 239-2110 (Fax)

GENERAL PRIVACY RELEASE FORM

I hereby authorize Senator John Cornyn to request on my behalf, pertinent to the Freedom of Information and Privacy Act of 1974, Title 5, Section 552A of the U.S. Code, access to information concerning me in the files of the following agencies:

US EPA

(Agency with which you are having difficulties).

Additionally, Senator Cornyn is authorized to see any materials that may be disclosed pertinent to that request.

PLEASE BRIEFLY DESCRIBE YOUR DIFFICULTY ON A SEPARATE PAGE

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test, problems arose with the lab equipment. The final test was aborted due to questionable conditions at Lotus Engineering. Questionable issues have been discovered, including, that Lotus was testing incorrectly for some time and that the EPA was aware of discrepancies at Lotus. Subsequently, other questions have been raised to the EPA concerning the issues at Lotus. However, Chen has discounted any concerns about the improper procedures and problematic equipment at Lotus.

During Road Rat testing Chen took Road Rat owner aside and made several comments about TET. These statements were relayed to exempt 6

Statements attributed from Chen included:

1. Mr. exempt 6 partner is in the federal penitentiary;
2. Mr. exempt 6 audit was unsatisfactory and problems were found;
3. TET does not do mileage accumulation properly;
4. TET does not do proper testing or scheduled maintenance on customer's vehicles; and
5. Road Rat Motorcycles tested at TET would not ever pass, but if Road Rat repeated the 6000 km testing program at Lotus they would not require confirmatory testing, and Lotus testing is superior to TET.

exempt 6 notified Jackson of the EPA, on October 3, 2014, that the statements were not true, derogatory, inflammatory, misleading, and incorrect. That such statements were in similar to the comments Chen had writing earlier in the year. Chen's statements showed restraint of trade and corruption on EPA part. Mr. Jackson was asked to contact exempt 6 before 5:00 p.m., October 6, 2014 and discuss the issues. To date there has been no contact from the EPA concerning the October 3, 2014 communication.

TET has documents that span back to 2005 notifying the EPA of fraudulent behavior of one of its previous associate Michael Johnson ("Johnson") who now is in a federal penitentiary. exempt 6 supported the EPA investigation with evidence and consulting to support the charges against Johnson. exempt 6 also has correspondence in support of individual retaliatory audits from EPA personnel who on both occasions were on a "witch-hunt." against TET. exempt 6 has supported the EPA requests of both audits and requested audit final results. exempt 6 and TET both were designated victims in the fraudulent behavior of exempt 6 as a result of the EPA investigation. TET has made every effort to support the EPA in its efforts

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Time line of reported Office of Mobile Source Emissions (EPA) Internal Corruption

1. 1996

Texas Environmental Technologies LLC (TET) formed by *exempt*

2. 1997

Mike Johnson (MJ) independent contracted as lab manager.

3. 2004

exempt hurt in motorcycle accident, lost leg hospitalized 6 months.

4. 2005

June MJ fired for theft of services, MJ stages break in of lab, Ft. police notified. EPA notified that MJ reporting fraudulent test results for his company System Launch.

6. 2010

WR challenges EPA Enforcement rep. Jocelyn Adair on behalf of TET customer. TET receives 1st ever "random audit" request from EPA "auditor" Amelie Isin. Isin actually not auditor but an attorney for enforcement div EPA, denies knowing Adair.

November Isin, Schnare threaten criminal action if TET does supply all cust. records.

TET hires attorney for representation ultimately costing over 30K for defense. Dec, Jan 2011 EPA assigns case to Meetu Kral.

7. 2011

August TET hired by Arkmos Engineering Utah for engine dev. and Testing.

8. 2012

EPA Spec. Agt. Criminal Division Tim Townsend interview WR for support of case against MJ.

Audit report never given to TET of audit conclusions by Dir. Cleophas Jackson (CJ)

EPA Chen e-mail sent disclosing request for correlation program request denied.

9. 2013

Jan. Arkmos COC requested, rejected by EPA CJ unless confirmed @ EPA lab.

July Grand Jury Indictment MJ for Wire fraud and making False statement to US.

Aug TET designated as Victim of above criminal actions of MJ by Justice Dept.

June-Sept EPA CJ request and conduct 2nd "audit of TET lab, no reason given.

Sept Request CJ result of audit.

Nov. Email CJ results of audit document.

Dec. 2014 Jan MJ pleads guilty to several counts.

10. 2014

Jan WR asked to testify in case by Errin Martin US Justice Attorney

Feb TET customer Road Rat requests carry-over on existing EPA approval.

Mar. EPA Chen rejects carry-over request

Mar. EPA Emily Chen Director writes no confidence email to TET customer

Mar. TET requests explanation of false statements by EPA rep. Chen.

Mar. 2 TET customers attempt to fire TET due to No confidence EPA letter.

Mar EPA requires retest and customer agrees TET saves relationship temp.

Aug MJ sentence to 28 months Fed Pen. and monetary fine.

Aug Chen begins problematic behavior stating 2 stroke engine will ever pass regs.

Sept. photos taken per request showing 49cc carburetor with lube oil connection.

Sept. request to witness confirmation test at Lotus engineering.

Oct. 2nd Chen states to Road rat vehicle will not pass testing unless tested at Lotus.

Oct 2nd Chen also states ~~exempt~~ partner in jail, ~~exempt~~ lab did not pass audit, TET does not do mileage accumulation correctly and does not follow proper testing protocol. Chen also states unit tested will fail if this continues and if company once approval must test at Lotus. Chen threatened to pull entire company COC

Oct 3rd e-mail sent to C J notifying that TET is contemplating legal action against Ms. Chen and EPA due to derogatory, inflammatory, misleading and restraint of trade incorrect remarks from Ms. Chen in both verbal and written correspondence EPA Management was notified that this type of behavior cannot be tolerated and must be corrected.

Oct. 8th customer Road Rat notifies C. Jackson in letter to requests several options for problem correction.

817-405-9756 or 817-313-7349

From: Chen, Emily [mailto:Chen.Emily@epa.gov]
Sent: Tuesday, March 04, 2014 11:41 AM
To: Margaret
Cc: Ringle, Donna; 'Ryan Tovatt'
Subject: RE: Road Rat / Bintlili Request to Carry Across Certification Data

Margaret:

Yes, I denied Road Rat's request to use HerChee's test data in lieu of the required tests for Road Rat's certification, based on the reasons below:

(1) we do not have the confidence on Her Chee's test data. (this basically states that EPA does not have confidence in TET test data thus in the test lab itself) You may look into the driving distances of each test to see if you agree with us;

(2) we do not have the confidence that the service accumulation were done correctly on the original EDV, based on other information that we have acknowledged during our audit at the test lab; (again EPA does not have confidence that lab did service accumulation correctly same as no confidence in a subsequent letter you and I discuss the audit and was told the audit was done satisfactorily.)

(3) per 40 CFR 86.427-78, each Engine Family that applies for an EPA certificate must perform at least 4 tests to demonstrate compliance. While an applicant may ask (40 CFR 86.421-78(d)) using other's test data in lieu of performing the required certification tests, it is up to the Agency to make case-by-case determination, based on information available to the Agency; and

(4) while the HerChee's EF was certified, we did not have resources to verify the test results, but we do now. Copied below are the related regulations that authorize the Agency to call for a confirmatory test(s) during application review and/or call to test production vehicle(s) to verify compliance of an engine family.

Let me know if you have further questions.

Best regards,

Emily Chen, P.E.
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
734-214-4122
Chen.Emily@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

December 17, 2014

OFFICE OF
AIR AND RADIATION

Mr. Brian Castro
National Ombudsman and Assistant Administrator for
Regulatory Enforcement Fairness
Office of the National Ombudsman
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

Re: Response to Comment filed by Mr. *Exempt b* of Texas Environmental Technologies

Dear Mr. Castro:

I am responding to your November 3, 2014 letter, originally addressed to Susan Shinkman, Director of EPA's Office of Civil Enforcement, forwarding an October 28, 2014 comment that Mr. *Exempt b* Owner and General Manager of Texas Environmental Technologies (TET), submitted pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The comment does not involve a regulatory enforcement action, and it therefore is not subject to SBREFA section 222. Rather, the letter addresses concerns Mr. *Exempt b* has regarding the Office of Transportation and Air Quality (OTAQ), within the Office of Air and Radiation (OAR), at the U.S. Environmental Protection Agency (EPA or Agency). We understand the importance of your inquiry and address below Mr. *Exempt b* submission to your office.

Statutory and Regulatory Background

Over 149 million Americans are currently experiencing unhealthy levels of air pollution which are linked with adverse health impacts such as hospital admissions, emergency room visits, and premature death. Motor vehicles are a particularly important source of exposure to air pollution, especially in urban areas. EPA's Regulatory Programs help ensure cleaner air and result in health and welfare benefits for all of us. EPA's Mobile Source Compliance Programs are designed to ensure we achieve the expected air quality benefits and to ensure that manufacturers can compete on a level playing field. To that end, a robust compliance regime is critical to achieving real-world benefits promised by our rules and expected under the statute. We regularly conduct emission testing on new and in-use engines and vehicles, to address real-world performance of products sold in the United States.

Section 203 of the Clean Air Act ("CAA" or "the Act") generally requires that a manufacturer, distributor or importer have an effective "certificate of conformity" for any new motor vehicle or new motor vehicle engine sold or otherwise introduced in to commerce. *See e.g.*, 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.407-78. To obtain the required certificate of conformity, an application must be submitted to EPA meeting the requirements specified in the regulations for that vehicle or engine family. Relevant to Mr. *exempt b*, comment, 40 C.F.R. Part 86, Subparts E and F, contain the applicable requirements for on-highway motorcycles. More specifically, the specific information that must be included in an application for a certificate of conformity is located at 40 CFR § 86.416-80, and what emissions testing and test procedures must be performed for demonstrating compliance with applicable emissions standards are set forth at 40 CFR § 86.501-78 *et. seq.* EPA's authority to review and approve applications for certificates of conformity is provided at 40 CFR § 86.417-78. Under 40 CFR § 86.434-78, the EPA may require a person applying for a certificate of conformity to provide a test vehicle so that EPA may conduct confirmatory testing (usually issued as a confirmatory test order).

EPA's Response to Mr. *exempt b* concerns

exempt b comment makes serious allegations about our office, and we do not take them lightly. However, it appears that his concerns stem primarily from a lack of knowledge regarding how the certificate of conformity process works, as well as a misunderstanding of communications between other parties (e.g., between EPA and another company, not TET) and not between EPA and *exempt b*. We provide relevant background regarding these matters as we respond generally below to *exempt b* comment.

exempt b appears to have misinterpreted two of our standard audit processes in regards to a certificate of conformity application from Road Rat Motors, a client of TET, as an attack on the work of his company. *exempt b* has voiced his concern over EPA's rejection of Road Rat's use of "carry-across" data from previous testing by another manufacturer and our requirement of a confirmatory test at an EPA contractor laboratory. He has characterized the rejection of the carry-across data as a "no-confidence vote" in TET and the confirmatory test as a retaliatory action. Our regulations (40 CFR §86.421-78(d)) give us discretion to accept carry-across data but we did not find it appropriate to allow use of carry-across data in this instance. We notified Road Rat Motors of our decision regarding its request by email on March 4, 2014, and explained that one of the reasons we denied the request to use carry-across data was that the old test data indicated the vehicle was not tested over the appropriate test cycle. The vehicle has too little power to run the standard test cycle and should run a lower speed test based on the proportion of the maximum speed of the vehicle and the maximum speed of the standard test cycle. We could tell this was not done in the original testing because no proportional ratio for the test was provided in the test report. *exempt b* feels that our rejection of the carry-across data impugns his laboratory despite the fact that we made no mention of *exempt b* or his company in explaining that we would not accept the use of carry-across data in this instance. Despite *exempt b* concerns, his client, Road Rat Motors, chose to use his laboratory for the testing necessary to replace the proposed carry-across data.

When we reviewed the subsequent 2014 test reports for the vehicle, we discovered the vehicle had been incorrectly tested using a mixture of gasoline and motor oil as fuel. Some 2-stroke scooters do use a mixture of gasoline and oil as fuel, but this particular product is designed to mix oil and gasoline within the engine and should only have gasoline added to its fuel tank. Given the indication in the test report

that the wrong fuel may have been used, we found it appropriate to request a confirmatory test of the vehicle at an EPA contracted laboratory. ~~exempt~~ later informed us that his test reports were inaccurate and that in fact the vehicle had been fueled properly only on gasoline. By that time, we had already decided to conduct the confirmatory test and believed it still appropriate to go forward with testing the vehicle.


We conduct approximately 200 confirmatory tests annually across the various vehicle and engine segments we regulate. A portion of the vehicles or engines are chosen as part of a random audit while others are selected based on anomalies or other indications in the manufacturer's test reports to suggest a confirmatory test by EPA may be warranted. Unfortunately ~~exempt~~ viewed our decision for a confirmatory test to be a retaliatory action for his past relationship with a former business associate, Michael Johnson, who was convicted in 2013 for, among other charges, fraudulent submissions to EPA. On a number of occasions we have attempted to make clear to ~~exempt~~ that our decisions throughout this process have been made consistent with our practices for other manufacturers and in response to very specific testing issues unrelated to his past association with Mr. Johnson. While we understand that a requirement to provide a vehicle for a confirmatory test might make any manufacturer or laboratory wonder if EPA suspects wrongdoing at its facility, in fact the vast majority of confirmatory test audit requests are made based on random selections or discrete data issues as in this case.

Conclusion

Unfortunately, ~~exempt~~ appears to have misinterpreted communications between EPA and other parties, and that misinterpretation is the basis for his allegations against the Agency. As explained above, EPA has had several communications with ~~exempt~~ on many occasions in which EPA has attempted to explain why the Agency may request a test vehicle for confirmatory testing, what the regulations require with respect to emission test procedures, and why EPA may deny a request to use carry-across emission test data to certify an engine family. Our actions reflect our commitment to ensuring that every engine or vehicle for which EPA approves a certificate of conformity will meet the applicable standards, and not an intent to harm TET.

We appreciate the opportunity to respond to ~~exempt~~ concerns. If you have any questions or concerns regarding this matter, please contact Mr. Cleophas Jackson, Director of the Gasoline Engine Compliance Center, at (734) 214-4824.

Sincerely,


Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 05 2015

OFFICE OF
AIR AND RADIATION

The Honorable John Cornyn
United States Senate
Washington, D.C. 20510-4345

Dear Senator Cornyn:

Thank you for your November, 2014, communication on behalf of your constituent, *exempt* regarding his questions about the U.S. Environmental Protection Agency's requirements for testing of highway motorcycles.

We received a similar inquiry from the United States Small Business Administration Ombudsman (SBA). As described in more detail in the enclosed response from Byron Bunker, Director of the Compliance Division in the Office of Transportation and Air Quality, to the SBA, we believe that Mr. *exempt* concerns result from a misunderstanding of the Agency's standard processes associated with certifying that vehicles meet EPA emission standards. My staff have had several communications with *exempt* to attempt to explain the confirmatory testing program, and other aspects of the program, that reflect our commitment to ensure that every engine or vehicle will meet applicable standards.

Again, thank you for your inquiry. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe".

Janet G. McCabe
Acting Assistant Administrator

Enclosure